1

3

4 5

6

9

8

10

11

12

13

14 15

> 16 17

18

20

19

21 22

23

24 25

26

27

28

///

Recorded in Official Records, Alameda County Patrick O'Connell, Clerk-Recorder

No Fee

97042207 10:20am 02/13/97

005 29040847 29 06

A91 18 7.00 51.00 0.00 0.00 0.00 0.00 0.00 0.00

Department of Toxic Substances Control Region 2 700 Heinz Avenue, Suite 200 Berkeley, CA 94710 Attention: Barbara J. Cook, P.E., Chief

ORIGINAL.

RECORDED ON BEHALF OF AND

WHEN RECORDED RETURN TO:

Site Mitigation Branch

## COVENANT OF DEED RESTRICTION

(Agreement)

This Covenant of Deed Restriction ("Covenant"), dated as of the 7 day of February 1997, is by and between the CITY OF OAKLAND, a municipal corporation, (the "City") acting by and through its Board of Port Commissioners ("Covenantor") and the State of California, Environmental Protection Agency, Department of Toxic Substances Control (the "Department"). The City is the owner of record and the Covenantor has control and jurisdiction of certain real property situated in the Port Area of the City of Oakland, County of Alameda, State of California, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (the "Property"). Covenantor and the Department desire and intend that in order to protect the present and future public health and safety and the environment, the Property shall be used in such a manner as to avoid potential harm to persons or property which may result from hazardous substances and wastes which have been deposited on the Property.

i

#### ARTICLE I

#### STATEMENT OF FACTS

- 1.01 <u>Description of Contamination</u>. The Property was formerly used for storing and formulating wood preservatives and agricultural chemicals. The entire Property has been covered with a multimedia cap ("Cap") to contain the hazardous substances and prevent migration.
- 1.02 Health Effects. The remedial actions taken at the Property have minimized the potential for off-site migration of the hazardous substances. Potential exposure via direct contact to contaminated surface soils has been eliminated by capping the contaminated areas. The Cap also minimizes rain from infiltrating into the contaminated soils. In the event that exposure is not minimized or eliminated, potential health effects are as follows:

#### Acetone

Acetone is a commonly used organic solvent. Acetone exhibits low toxicity. It can enter the body through inhalation, ingestion, or skin contact. Workers exposed to 600 to 2,150 ppm in the air experienced transient eye and nose irritation, which was reversible after removal from the source of exposure. Acetone causes lipids to dissolve, which could lead to dulling of the cornea. Exposure to high levels of acetone can cause central nervous system depression. Prolonged inhalation at high concentrations causes reversible irritation of the respiratory tract, coughing, headache, drowsiness, loss of coordination, and, in severe cases, coma. There is no

evidence that acetone has mutagenic or carcinogenic potential.

Acetone is considered by the U.S. EPA to be noncarcinogenic.

#### Benzene

Benzene has a low acute toxicity in mammals. Benzene exerts mainly a narcotic action at high concentration levels. Chronic intoxication in humans may give rise to severe bone marrow toxicity, eventually resulting in leukemia.

#### Chlordane'

Chlordane is a long lasting organochlorine insecticide. Chlordane is irritating to the skin and eyes and is acutely toxic when ingested by humans. Ingestion of 6 to 60 grams of chlordane by an adult may cause convulsions, nausea, an irregular heartbeat and possibly death. Long-term exposure to low levels of chlordane may cause liver and kidney damage and diseases of the blood. Mice exposed to chlordane during long-term experimental studies have exhibited cancer of the liver. In a study of workers exposed to chlordane for 34 years, no increase in any type of cancer was found.

#### DDD and DDT

DDT is an insecticide. DDD is a metabolite of DDT and is considered by EPA to have a similar toxicological profile. Ingestion of 35 mg a day for a short time period did not cause any acute toxicity during a study of healthy adult males. Ingestion of a high level of DDT (1000 mg) by an adult may cause nausea and convulsions. Experimental studies utilizing animals exposed to low levels of DDT for a long period of time indicated that DDT causes liver damage and an increased incidence of liver tumors. DDT accumulates in the fat of

3

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

humans and may pose a risk of delayed toxic effects years after the actual exposure occurs.

#### Dieldrin

Dieldrin is an insecticide used for the control of soil insects, especially termites. Short-term exposure of humans to high levels of dieldrin may cause headaches, dizziness, nausea, convulsions, and loss of consciousness that may result Most symptoms disappear with time after removal from the source of exposure. Animals exposed long term to low levels of dieldrin during experimental studies have exhibited liver damage and liver cancer. No cancers are known to have resulted from exposure of humans to dieldrin.

### Endosulfan

Endosulfan is used as an insecticide and is chemically related to dieldrin. The toxicity of endosulfan is similar to that of dieldrin both in types of symptoms caused and concentrations at which these symptoms occur. Short-term exposure of humans to high levels of endosulfan may cause headaches, dizziness, nausea, convulsions, and loss Most symptoms disappear with time after removal from the source of exposure. Animals exposed long term to high levels of dieldrin during experimental studies have exhibited liver damage but not liver cancer.

24

25

26

27

28

#### **PCBs**

PCBs are a mixture of many different isomers. They can be absorbed through the skin, gastrointestinal tract, and the lungs. The acute toxicity of PCBs is low, but chronic exposure can cause chloracne (a long-lasting, disfiguring skin disease), liver damage, reproductive disorders, and neurologic disease. PCBs are carcinogenic in rats and mice and are probably also carcinogenic in humans. PCBs have caused toxic effects to the fetus, but they are not believed to cause birth defects.

#### PCP

PCP is used as a wood preservative, herbicide, and fungicide. Short term exposure to high levels of PCP has caused fever and gastrointestinal irritation in humans. Humans occupationally exposed to low levels of PCP for a long time period have experienced persistent chloracne and damage to the liver and kidneys. Animals exposed long term to low levels of PCP during experimental studies have exhibited liver damage and in some instances liver cancer. This compound is considered a probable human carcinogen by the U.S. EPA.

#### 2,3 7,8-TCDD "Equivalents"

The main environmental sources of 2,3,7,8-TCDD are exhaust from cars powered by leaded gasoline, production and use of herbicides containing 2,4,5-trichlorophenoxy acids, and incineration of some municipal and industrial wastes. 2,3,7,8-TCDD can enter the body through ingestion, inhalation, and skin contact. In humans, exposure to 2,3,7,8-TCDD has caused chloracne and may possibly cause liver damage and

28

toxicity to the immune system. This compound has caused cancer in animals during experimental studies and is considered a probable human carcinogen by the EPA.

#### 2,3,4,6-Tetrachlorophenol

2,3,4,6-tetrachlorophenol is used as a wood preservative and fungicide. This compound is considered less acutely toxic than pentachlorophenol, another wood preservative. Short-term exposure to high levels of 2,3,4,6-tetrachlorophenol has caused skin and gastrointestinal irritation in humans. Humans occupationally exposed to low levels 2,3,4,6tetrachlorophenol for a long time period have experienced persistent chloracne. This compound is not mutagenic when tested in several in vitro systems. There is inadequate data available to assess the carcinogenicity tetrachlorophenol, but the available data suggest that this compound is noncarcinogenic.

1.03 <u>Surrounding Land Use</u>. The Property is located in an area used for industrial and commercial purposes. The area within a one-mile radius of the Property is primarily industrial and commercial.

#### ARTICLE II

#### GENERAL PROVISIONS

2.01 Provisions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), upon and subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and all of the Restrictions

11

13 14

15

16 17

18

19

20 21

22

23

24

25

26

27

shall run with the land and pass with each and every portion of the Property, and shall apply to, inure to the benefit of, and bind the respective successors in interest thereof unless terminated pursuant to Article V hereof. Each and all of the Restrictions are imposed upon the entire Property unless expressly stated as applicable to a specific portion of the Property. Each and all of the Restrictions are imposed pursuant to California Health and Safety Code Sections 25355.5 and 25356.1.

- Concurrence of Owners Presumed. All purchasers, lessees, or possessors of any portion of the Property shall be deemed by their purchase, lease, or possession of such Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of future Owners (as hereinafter defined) and Occupants (as hereinafter defined) and that their interest in the Property shall be subject to the Restrictions contained herein.
- 2.03 Incorporation into Deeds and Leases. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated by reference in each and all deeds in which it is the grantor and leases in which it is the lessor of any portion of the Property.

#### ARTICLE III

#### **DEFINITIONS**

Department. 3.01 "Department" shall mean the State of California, Environmental Protection Agency, Department of Toxic Substances Control and shall include its successor agencies, if any.

- 3.02 <u>Improvements</u>. "Improvements" shall mean all buildings, roads, driveways, regrading, and paved parking areas, constructed or placed upon any portion of the Property.
- 3.03 Occupant(s). "Occupant(s)" shall mean those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to occupy any portion of the Property.
- 3.04 Owner(s). "Owner(s)" shall mean the Covenantor or successors in interest, including heirs and assigns, who hold title to all or any portion of the Property.
- 3.05 <u>Director</u>. "Director" shall mean the Director of the Department or his or her designee.
- 3.06 <u>Cap.</u> "Cap" shall mean the protective cover used to isolate hazardous substance contaminated soils on the Property from human or environmental exposure. The Cap is a multimedia Cap including 30-mil HDPE, Geonet and Geotextile.

#### ARTICLE IV

# DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY

- 4.01 Restrictions on Development and Use. Covenantor promises to restrict the use of the Property as follows:
  - a. Property shall be restricted to commercial (e.g., office buildings, stores, banks, restaurants and service outlets) and industrial use.
  - b. Residential development for human habitation shall not be permitted on the Property.
  - c. Hospitals or health clinics shall not be permitted on the Property.

- d. Day-care centers for either children or senior citizens shall not be permitted on the Property.
- e. Schools for children under 18 years of age shall not be permitted on the Property.
- f. No drilling for drinking water shall be permitted on the Property.
- g. No raising of food (cattle, food crops, cotton and etc.) shall be permitted on the Property.
- h. Subdivision of the Property is forbidden, except as allowed under California Health and Safety Code Section 25232 (a) (2) and (b) (2).
- i. No activities which will disturb the capped soils or groundwater shall be permitted on the Property without a Soil Management Plan and Health and Safety Plan submitted to the Department for review and approval.
- j. Any contaminated soils brought to the surface of the Property by grading, excavation, trenching or backfilling pursuant to a Department approved Soil Management Plan and Health and Safety Plan shall be managed in accordance with all applicable provisions of state and federal law.
- k. All uses and development of the Property shall preserve the integrity of the Cap, groundwater monitoring and any other remediation system installed on the Property pursuant to the requirements of the Remedial Action Plan.

- 1. The Owner(s)/Occupant(s) shall provide notification to any subsequent purchasers, lessees and tenants stating that there is residual contamination as specified in California Health and Safety Code Section 25359.7(a).
- m. Any proposed alteration of the Cap shall require written approval by the Department.
- 4.02 Conveyance of Property. The Owner(s) shall provide thirty (30) days notice to the Department of any sale, lease, or other conveyance by the Owner of the Property or an interest in the Property to a third person. The Department shall not, by reason of the Covenant, have authority to approve, disapprove, or otherwise affect any sale, lease, or other conveyance of the Property except as otherwise provided by law, by administrative order, or by reason of this Covenant.
- 4.03 Enforcement. Failure of any Owner/Occupant to comply with any of the Restrictions set forth in section 4.01 hereof, shall be grounds for the Department, by reason of the Covenant, to require that the Owner/Occupant modify or remove any Improvements constructed in violation of that Section 4.01. Violation of the Covenant shall be grounds for the Department to file civil and criminal actions against the Owner/Occupant as provided by law.
- 4.04 Notice in Agreements. In the event any conveyance by the Owner, the Owner shall execute written lease, sublease, or rental agreements relating to the Property. Any such instrument shall contain the following statement:

"The land described herein contains hazardous substances. Such condition renders the land and the owner, lessee, or other possessor of the land subject to requirements, restrictions, provisions, and liabilities contained in

#### 

Chapter 6.5 and Chapter 6.8 of Division 20 of the Health and Safety Code as well as by a specific Covenant of Deed Restriction, a copy of which is attached hereto and incorporated herein by reference. This statement is not a declaration that a hazard exists."

#### ARTICLE V

#### VARIANCE AND TERMINATION

- 5.01 <u>Variance</u>. Any Owner(s) or, with the Owner's(s') written consent, any Occupant of the Property or any portion thereof may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with California Health and Safety Code Section 25233.
- 5.02 <u>Termination</u>. Any Owner(s) or, with the Owner's(s') written consent, any Occupant of the Property or a portion thereof may apply to the Department for a termination of the Restrictions as they apply to all or any portion of the Property. Such application shall be made in accordance with California Health and Safety Code Section 25234.
- 5.03 Term. Unless terminated in accordance with Section 5.02 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

#### ARTICLE VI

#### MISCELLANEOUS

- 6.01 <u>No Dedication Intended</u>. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property or any portion thereof to the general public or for any purposes whatsoever.
- 6.02 <u>Notices</u>. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be

in writing and shall be deemed effective 1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served or official of a government agency being served, or 2) three (3) business days after deposit in the mail if mailed by United States mail, postage paid, certified return receipt requested:

To: Port of Oakland
530 Water Street, Second Floor
Oakland, California 94607
Attention: Mark O'Brien

To: Department of Toxic Substances Control Region 2 700 Heinz Avenue, Suite 200 Berkeley, California 94710 Attention: Barbara J. Cook, P.E., Chief Site Mitigation Branch

- 6.03 Partial Invalidity. If any portion of the Restrictions or terms set forth herein is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.
- 6.04 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not part of the Covenant.
- 6.05 Recordation. This instrument shall be executed by the Covenantor and by the Department's Site Mitigation Branch Chief. This instrument shall be recorded by the Covenantor in the County of Alameda within five (5) days of the Covenantor's receipt of fully executed copies of this Covenant.
- 6.06 <u>References</u>. All references to Code sections include successor provisions.

1	6.07 Effective Date. This Covenant shall become effective
2	upon execution by all parties hereto including the parties' legal
3	representatives.
4	IN WITNESS WHEREOF, the parties execute this Covenant as of
5	the date set forth above.
6	COVENANTOR:
7	
8	CITY OF OAKLAND, a municipal corporation, acting by and
9	through its Board of Port Commissioners
10	Males Tostas Date: 2/10/97
11	By: Charles W. Foster
12	Executive Director STATE OF CALIFORNIA
13	ENVIRONMENTAL PROTECTION AGENCY
14	DEPARTMENT OF TOXIC SUBSTANCES CONTROL
15	By: Barbara J. Cook, P.E., Chief  Date: 2/7/97
16	By: Barbara J. Cook, P.E., Chief Site Mitigation Branch Department of Toxic Substances Control
17	Department of loxic substances control
18	
19	Approved as to form and legality this day
20	of, 1998.
21	Port Resolution No.: 97027
22	David L. Alexander  P.A.# 97-41  Port Attorney
23	
24	
25	
26	
27	
28	

State of A.A. S. A.L.			
State of CALIFORNIA			
County of ALAMKDA			
•			
On Frbru Aay 1,1997 before m	NAME. TITLE OF OFFICER - E.G., JANE DOE, NOTARY PUBLIC.		
OATE /	NAME. TITLE OF OFFICER - E.G., JANE DOE, NOTARY PUBLIC		
personally appeared	LA J. COOK		
	NAME(S) OF SIGNER(S)		
☐ personally known to me - OR - ☐ pi	roved to me on the basis of satisfactory evidence		
	to be the person <del>(s)</del> whose name <del>(s)</del> is/are		
	subscribed to the within instrument and ac-		
<b></b>	knowledged to me that he/she/they executed		
Alco A Familia	the same in his/her/their authorized		
Comm. Torreira	capacity(ies), and that by his/her/their		
OTARY PLEASE - CALIFORNIA	signature(s) on the instrument the person(e),		
Corner. Emires March 9, 1997	or the entity upon behalf of which the		
	person(s) acted, executed the instrument.		
•	in services across exposited the mattallient.		
	WITNESS my hand and afficial and		
	WITNESS my hand and official seal.		
,			
	(Slice L. Vurun		
	SIGNATURE OF NOTARY		
OPTIONAL			
Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent			
fraudulent reattachment of this form.	responsibilitying on the document and could prevent		
CAPACITY CLAIMED BY SIGNER	BERGE 1011 011 1111 1111 1111 1111 1111 111		
	DESCRIPTION OF ATTACHED DOCUMENT \		
U INDIVIDUAL	<b>)</b>		
LJ CORPORATE OFFICER	COUGNANT OF DEED RESTRICTION		
	TITLE OR TYPE OF DOCUMENT		
TITLE(S)	THE STITT E OF BOOMERIN		
☐ PARTNER(S) ☐ LIMITED			
GENERAL GENERAL	/5		
☐ ATTORNEY-IN-FACT	NUMBER OF PAGES		
☐ TRUSTEE(S)			
CUADDIANIONIA	. (		
GUARDIAN/CONSERVATOR	· (		
GUARDIAN/CONSERVATOR OTHER:	February 7, 1997		
	February 7, 1997  DATE OF DOCUMENT		
OTHER:	February 7, 1997  DATE OF DOCUMENT		
SIGNER IS REPRESENTING: NAME OF PERSON(S) OR ENTITY(IES)	February 7, 1597  DATE OF DOCUMENT		
SIGNER IS REPRESENTING:	DATE OF DOCUMENT		
SIGNER IS REPRESENTING: NAME OF PERSON(S) OR ENTITY(IES)	DATE OF DOCUMENT		

	ALTONIA DE LA CONTRACTORIO DE LA C		
State of <u>CALIFORNIA</u>			
County of AZAMEDA	<del></del>		
On February 11, 1897 before me	NAME. TITLE OF OFFICER . E.G., JANE DOE, NOTARY PUBLIC.		
personally appeared <u>Charles</u> W	NAME, TITLE OF OFFICER - E.G., JANE DOE, NOTARY PUBLIC		
personally known to me - OR - pro	NAME(S) OF SIGNER(S)  Oved to me on the basis of satisfactory evidence		
	to be the person(s) whose name(s) is/are subscribed to the within instrument and ac-		
Alice A. Ferreira Z	knowledged to me that he/she/they executed the same in his/her/their authorized		
ALAMEDA COUNTY	capacity( <del>ies)</del> , and that by his/her/their		
13, 137	signature(s) on the instrument the person(s), or the entity upon behalf of which the		
•	person(s) acted, executed the instrument.		
	WITNESS my hand and official seal		
,			
	SIGNATURE OF NOTARY		
ODTIONAL			
Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.			
CAPACITY CLAIMED BY SIGNER	DESCRIPTION OF ATTACHED DOCUMENT		
LI INDIVIDUAL CORPORATE OFFICER			
EXECUTIVE DIRECTOR	COVENANT OF DEED RESTRICTION TITLE OR TYPE OF DOCUMENT		
PARTNER(S)			
GENERAL ATTORNEY-IN-FACT	NUMBER OF PAGES		
☐ TRUSTEE(S) ☐ GUARDIAN/CONSERVATOR			
OTHER:	FEBRUARY 7, 1997 DATE OF DOCUMENT		
	DATE OF DOCÚMENT		
SIGNER IS REPRESENTING: NAME OF PERSON(S) OR ENTITY(IES)	BAXBARA J. COOK		
Post OF OPKLAND	SIGNER(S) OTHER THAN NAMED ABOVE		
,—————————————————————————————————————	Q		

#### Exhibit "A"

# LEGAL DESCRIPTION SUPERFUND SITE

Real property located in the "Port Area" of the City of Oakland, County of Alameda, State of California, more particularly described as follows:

COMMENCING at Port of Oakland Monument H007, being a pin and shiner set in concrete in a City of Oakland monument box, located at the intersection of The Embarcadero and Dennison Street, commonly known as monument "DEN"; Thence from said Point of Commencement, northerly in a direct line with Port of Oakland Monument H008, being a nail set in concrete in a City of Oakland monument box, located at the intersection of The Embarcadero and 19th Avenue, commonly known as monument "CITY", North 05°28'28" West 44.40 feet; Thence South 84°31'32" West 46.86 feet to the TRUE POINT OF BEGINNING;

Thence South 47°26'20" West 10.56 feet; thence South 83°39'56" West 226.08 feet; thence northwesterly along a non-tangent curve concave to the northeast, whose center bears North 17°49'28" East, having a radius of 34.60 feet, through a central angle of 55°10'38", for an arc distance of 33.32 feet; thence northeasterly along a nontangent curve concave to the northeast, whose center bears North 77°54'04" East, having a radius of 103.06 feet, through a central angle of 33°09'11", for an arc distance of 59.63 feet; thence North 24°56'36" East 32.98 feet; thence North 29°08'57" East 76.06 feet; thence northeasterly along a non-tangent curve concave to the southeast, whose center bears South 53°39'54" East, having a radius of 65.77 feet, through a central angle of 51°30'09", for an arc distance of 59.12 feet, to a point of reverse curvature; thence northeasterly along a reverse curve concave to the northwest, whose center bears North 02°09'45" West, having a radius of 34.00 feet, through a central angle of 56°35'10", for an arc distance of 33.58 feet; thence North 22°23'11" East 34.74 feet; thence northeasterly along a non-tangent curve concave to the northwest, whose center bears North 70°20'57" West, having a radius of 263.09 feet, through a central angle of 13°10'02", for an arc distance of 60.46 feet; thence North 09°49'28" East 69.95 feet; thence North 25°32'31" East 12.42 feet; thence northeasterly along a non-tangent curve concave to the southeast, whose center bears South 20°37'18" East, having a radius of 92.99 feet, through a central angle of 33°13'36" for an arc distance of 59.92 feet; thence South 03°59'17" East 222.46 feet; thence South 03°25'20" East 141.85 feet to the TRUE POINT OF BEGINNING.

Containing an area of 59,060.58 square feet, (1.3558 acres), more or less, measured at ground level.

The Coordinates of Port of Oakland monument H007 are North: 2,110,927.789 and East: 6,058,088.701 as established by Record of Survey 990, filed for record in Book 18 of Surveys, at Page 50-60, Alameda County Records.

Bearings, Distances and Coordinates called for by this description are based upon the California Coordinate System, Zone III, North American Datum of 1983(1986 Values) as shown upon said Record of Survey 990. All distances called for herein, are grid distances. To convert distances called for by this description to ground distances, multiply by 1.0000709.

# END OF DESCRIPTION

# SURVEYORS STATEMENT

I hereby state that this description and its accompanying plat were prepared by me or under my direction in January, 1997.

Dated: /-3-97

Firest A. Reed, L.S. 6207

License Expires: 3/31/98

